STATEMENT AS TO JURISDICTION.

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936, which provides:

> "In any case, civil or criminal, in a circuit court of appeals, or in the Court of Appeals of the District of Columbia, it shall be competent for the Supreme Court of the United States, upon the petition of any party thereto, whether Government or other litigant, to require by certiorari, either before or after a judgment or decree by such lower court, that the cause be certified to the Supreme Court for determination by it with the same power and authority, and with like effect, as if the cause had been brought there by unrestricted writ of error or appeal."

QUESTIONS PRESENTED.

The questions involved in this proceeding are:

1.

Whether the title to all property of an insolvent insurance company, incorporated and existing under the laws of the District of Columbia, vests in a receiver (as provided by sec. 397, Title 5, 1929 D. C. Code, set forth in appendix hereto) who was appointed in an original proceeding filed by a judgment-creditor of said insolvent creditor of said insolvent corporation for involuntary dissolution of the corporation, pursuant to secs. 416 and 409, Title 5, 1929 D. C. Code (set forth in appendix hereto) as against the asserted claims to the possession of said property of such corporation by two custodian or holding Receivers of the corporation who were previously appointed in an ordinary chancery suit which had been brought against said insolvent insurance corporation

for receivers to manage, operate and control, *pendente lite* and permanently, the life insurance business of said insolvent corporation (the value of whose capital stock was wiped out) in the District of Columbia and throughout the United States (the operation of such life insurance company being subject to civil penalties and criminal prosecution in this district, Secs. 171-174, incl., 176, 177, 179, 181, Title 5, 1929 D. C. Code, Transcript of Record, pp. 482-6). Three of the six Judges of the Court of Appeals of the District of Columbia decided that the custodian Receivers were entitled to hold the custody of the property of the corporation, and denied the right of title of the Receiver appointed in the statutory dissolution suit. Such decision fails to give proper effect to four decisions of this Court, and is in conflict with decisions of two Circuits Courts of Appeals, hereinafter cited in support of reasons for allowance of writ of certiorari.

The said four cases were quoted in brief of your petitioners (appellees) filed in the said Court of Appeals.

II.

Whether the three Judges of said Court of Appeals had jurisdiction to hold valid a decree of the trial court (Justice O'Donoghue), which appointed permanent receivers of a hopelessly insolvent District of Columbia life insurance corporation, doing business in the said district and in twenty-five states of the United States, to manage, operate and control said insurance company, in violation of statutes of said District regulating the conduct of life insurance companies, and by *ex parte* orders of the trial court, said permanent Receivers, under their plan, set up a separate "modified" life insurance business, entering into new "modified contracts" with 65,000 of a large number of the old or existing policyholders of the insolvent company, the Receivers using all of the assets of non-

consenting policyholders and other creditors, and collecting approximately one million dollars from the Receivers' contracts of insurance, which premiums, together with the major portion of the assets of the insolvent corporation, were dissipated by said Receivers in the promotion of their plan, during all the while the receivership itself was insolvent, and after the breach of all Receivers' contracts, the Receivers obtained an order of court to discontinue collection of premiums, and to liquidate all of the remaining tangible assets of the insolvent company.

III.

Whether custodian receivers of a District of Columbia insolvent corporation, who were not parties to a statutory proceeding properly brought by a judgment-creditor against said corporation, pursuant to statute, for a decree dissolving the corporation, in which the corporation was sole defendant and was duly served with process and a copy of the bill, and files no answer, but the custodian receivers file answer, opposing dissolution, and thereafterwards the attorneys for custodian receivers and for plaintiff enter into a written stipulation which conceded the correctness of the essential allegations of plaintiff's bill for dissolution, and after final hearing, a decree in favor of the plaintiff is entered granting the prayers of the bill, can appeal, without leave of Court, from said decree in the name of the corporation and themselves, and sign the name of the corporation to the appeal bond, without the authority of the corporation, as against a motion timely made by the appellee in the appellate court to dismiss the appeal, to which motion the corporation consents, advising the appellate court that the corporation did not desire to prosecute the appeal from the decree dissolving said corporation. Did the said Court of Appeals have jurisdiction to entertain the appeal by the custodian re-

ceivers, taken without any leave of court, and in opposition to the only defendant—the corporation?

IV.

Whether three Judges of the six Judges of the said Court of Appeals constituted a quorum for the hearing and disposition of this case, the remaining three Judges not participating therein, as against a motion timely filed by appellees and before oral argument, requesting that all of the members of the Court hear and decide the case, which motion was denied; and, whether, after the decree is reversed by the three Judges who heard the case, appellee timely filed a motion for rehearing or reargument before a full bench, which was denied, which included a denial for such rehearing or reargument; and whether the foregoing constitutes a violation of the due process clause of Article V of the amendments to the Federal Constitution, or whether it rested in the discretion of the Court of Appeals to assign this cause for hearing and decision by only three of the six Judges of the Court of Appeals.

V.

Whether, after counsel for the custodian Receivers by written stipulation with counsel for plaintiff stipulated as to the correctness of the essential allegations of plaintiff's bill for dissolution, and after stating to the trial court that plaintiff was entitled to a decree dissolving said corporation the said Receivers could appeal from the decree in favor of plaintiff.

VI.

Whether three Judges of the said Court had jurisdiction to entertain the appeal taken, without leave of court,

by the custodian Receivers, who were not parties in the dissolution suit, as against the timely motion of appellee to dismiss the appeal, to which motion the corporation filed its written consent in the Court of Appeals, advising the Court that it did not desire to prosecute the appeal.

VII.

The decree of Justice Gordon, holding District Court, dissolving the corporation, appointing a receiver, and decreeing that the trial court had no jurisdiction of the subject-matter of the case of *John Randolph Pinkett v. The National Benefit Life Insurance Co.* (Equity 53,391), and to appoint Clark and Bryan as permanent Receivers to operate, manage and control and carry on the business of the said insurance company, *in insolvency;* and that the opinion of the three Judges of the Court of Appeals reversing Judge Gordon was erroneous.

REASONS RELIED ON FOR ALLOWANCE OF A WRIT OF CERTIORARI.

I.

The opinion of the three Judges of the said Court of Appeals fails to give proper effect to eight decisions of this Court, applicable to this case.

Relfe v. Rundle, 103 U. S. 222.
Curran v. State of Arkansas, 15 Howard 304.
Bernheimer v. Converse, 206 U. S. 516, 534.
Converse v. Hamilton, 224 U. S. 243, 256.
International Insurance Co. v. Sherman, 262 U. S. 346.
National Surety Co. v. Coreill, 289 U. S. 426.
Lovell v. St. Louis Mutual Life Insurance Co., 111 U. S. 264.
Carr v. Hamilton, 129 U. S. 252.

The said opinion conflicts with two cases of two Circuits Courts of Appeals, namely:

Sterrett v. Second National Bank of Cincinnati, 246 Fed. 753 (CCA6), and
McConnell v. Hubbard, 272 Fed. 961 (CCA2), and

also with three decisions of the United States Court of Appeals for the District of Columbia, namely:

Johnston v. Davis, 56 App. Cas. D. C. 15, 16;
Richards v. Geiger, 39 App. Cas. D. C. 278; and
Rapeer v. Colpoys, 66 App. Cas. D. C. 216;

all of which are hereinafter referred to in the brief appended hereto.

II.

Whether custodian Receivers Clark and Bryan of The National Benefit Life Insurance Company, corporation (Equity 53,391), *had the implied authority, without leave of court,* to note and perfect an appeal to the United States Court of Appeals for the District of Columbia from a decree entered in the instant independent statutory proceeding entitled *The Shaw-Walker Company, corporation, v. The National Benefit Life Insurance Company, corporation,* as sole defendant (Equity 55,677), *in which latter proceeding said custodian Receivers were not parties,* and in which proceeding the corporation was dissolved, a receiver appointed and injunctive relief granted, and where the custodian Receivers (in the previous equity suit) took the appeal without authority of the corporation, or by its direction, as against a motion timely made in the appellate court by the appellee to dismiss the appeal, to which motion the corporation, by its counsel, filed a written consent in the appellate court consenting to the dismissal of the appeal and advising the Court that it did not desire to prosecute said appeal.

III.

Whether, in a statutory proceeding brought by a judgment-creditor of a District of Columbia insolvent life in-

surance corporation, for the involuntary dissolution of said corporation, pursuant to the provisions of the statutes of the District of Columbia, in which the corporation, sole defendant, is duly served with process and a copy of the bill, as required by the statute, and fails to file a corporate answer, but in which dissolution proceeding two custodian Receivers of said corporation, theretofore appointed in an ordinary equity suit, then pending (the bill of which latter suit prayed merely for the appointment of Receivers of the insolvent insurance corporation for the purpose of conducting its life insurance business in insolvency, in the District of Columbia and elsewhere throughout the United States the carrying on of such business by an insolvent corporation being in violation of the statutes of the District of Columbia) appeared, by said Receivers' counsel, and in the names of said custodian Receivers, assuming to act for the said insolvent corporation in the dissolution suit, filed answer therein, opposing dissolution, but thereafter, before final hearing, stipulated with counsel for the judgment-creditor-plaintiff in the dissolution suit, as to the correctness of the essential allegations of the bill for dissolution—can said custodian Receivers, *without leave of Court*, after final decree is entered dissolving said corporation, note, perfect, and maintain an appeal, in the names of the corporation and themselves, as custodian Receivers (the corporation itself not appealing) *against a motion timely made by appellee in the appellate court to dismiss the appeal on the ground that the defendant corporation (sole defendant) did not appeal, and the corporation, by its counsel, advises the appellate court that the corporation does not desire to prosecute the appeal and files written consent in the appellate court consenting to appellee's motion to dismiss the appeal.*

IV.

Whether three of the six Judges of the United States Court of Appeals for the District of Columbia constitute

a quorum for the hearing and disposition of cases appealed to that Court from the District Court of the United States for the District of Columbia and whether a decision by three of said Judges is a denial of the due process clause of Article V of the Amendments to the Constitution of the United States, where a written motion was timely filed by an appellee in a case in said appellate court, before the case is called for oral argument, requesting the right to appellee's counsel to present appellee's cause to the Chief Justice and the five Associate Justices of that Court, and said motion is denied, and where only three Judges of that Court sat, heard and decided the case, and, whether, after said three Judges filed their written opinion deciding the case (the other three Judges not participating therein) reversing the decree, appellee again timely filed its petition for rehearing or reargument before the full bench, which was denied, including denial of the said motion for rehearing or reargument, said denial is a violation of the due process clause of the Fifth Amendment to the Federal Constitution, or whether the denial to an appellee to present his cause to the full bench of said Court of Appeals is authorized by any statute, or rests within the discretion of the Court.

V.

Whether, in view of certain statutes in force in the District of Columbia, regulating the conduct of life insurance companies or associations in said District (Secs. 171, 172, 173, 174, 176, 177, 179, 181, Title 5, 1929 D. C. Code: see Transcript of Record, pp. 482-4) *prohibiting an insolvent life insurance company or association, or one which is impaired to the extent of twenty-five per centum of its capital stock, from carrying on a life insurance business* (Sec. 174, Title 5, 1929 D. C. Code: see Transcript of Record, pp. 483), and one violating

said statute is made liable for a penalty for each day's violation, and also to prosecution in the police court of this District, the United States Court of Appeals for the District of Columbia had jurisdiction to validate or affirm the decree of Justice O'Donoghue, holding the Supreme Court of the District of Columbia (now District Court of the United States for the District of Columbia) in the case entitled *John Randolph Pinkett, plaintiff, vs. The National Benefit Life Insurance Company,* corporation (Equity 53,391), in which respondents herein, Gilbert A. Clark and Frank B. Bryan, Jr., were appointed Receivers of said insolvent corporation, with authority and direction to carry on the life insurance business of the said insolvent corporation, in the District of Columbia, and elsewhere throughout the United States, which the said receivership did when the said receivership itself was insolvent, and when said permanent Receivers never even had a license.

VI.

Whether the United States Court of Appeals for the District of Columbia had jurisdiction to entertain the appeal of respondents Clark and Bryan when their counsel stipulated in the trial court as to the correctness of the essential allegations of the bill of complaint of plaintiff (petitioner The Shaw-Walker Company herein) for the dissolution of said defendant corporation, and stated to the trial court that plaintiff was entitled to decree dissolving the corporation.

VII.

Justice Gordon, holding District Court, had jurisdiction to enter the final decree dissolving defendant corporation, appointing a receiver, and awarding injunctive relief, based upon his finding of facts, conclusions of

law, the evidence, and the stipulation between counsel for the plaintiff and counsel for Receivers Clark and Bryan, and also to decree that the Pinkett proceedings were void for lack of jurisdiction of the Court of the subject-matter of that suit, and that the appointment of Clark and Bryan as permanent Receivers to operate the insolvent defendant insurance company, *in insolvency.* If the three of the six Judges of the United States Court of Appeals had jurisdiction, which is denied, to entertain the appeal of Receivers Clark and Bryan, then their opinion reversing the decree of Justice Gordon is erroneous.

Wherefore, petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Court, directed to the United States Court of Appeals for the District of Columbia, commanding said Court to certify and send to this Court a transcript of the record and of all proceedings in this cause, to the end that said cause may be reviewed and determined by this Court; that the judgment and decree of Justice Rutledge, concurred in by Chief Justice Groner and Justice Stephens of the said Court of Appeals be reversed, and that petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and proper.

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